

Attachment to Independent Case Review Report
for CDRU # 195 Case File # 95-269475.

Material Examiner Malone (RO)

Remarks:

After research it has been determined that the National Law Enforcement Teletype Systems communication (NLET) dated November 22, 1985, of Examiner Malone (RO) is missing from the case file at the time of review by the Independent Scientist.

INDEPENDENT CASE REVIEW REPORT

Independent Review conducted by: Cathryn K. Levine

Area(s) of Expertise: Hair + Fiber

Review commenced at: 8:30 AM (Time), 5/18/99 (Date)

File #: 95-269475

Laboratory #(s): 51023027 S RQ 60224092 S RI
51028064 S RQ WM VJ RI 60218065 S RQ
51114014 S RQ WM 61001001 - S - RQ

Examiner(s) & Symbols

	Reviewed	Not Reviewed		Reviewed	Not Reviewed
<u>RQ</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>RI</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>WM</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<u>VJ</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Materials Reviewed

Trial testimony transcript(s) of: Michael P. Malone

Testimony Date(s): no date provided Pages: pg. 947 - 1034

Laboratory Report(s):

Laboratory Number: 60218065 S RQ Date: March 12, 1986

Laboratory Number: 51023027 S RQ / 51028064 S RQ WM VJ RI Date: March 31, 1986

Laboratory Number: 60922049 S RQ RI Date: October 21, 1986

Examiner Bench Notes of: Technicians + Agent Malone

Laboratory Number: 60218065

Laboratory Number: 51023027

Laboratory Number: 60922049

X REF. LAB# 61001001

→ Also X-reference case 61001001 S RQ RI

Was any other material reviewed? Yes No

If yes, please identify and/or describe the material: letter dated 2/10/86 from Texas Dept. of Public Safety, letter dated 11/5/85 from [redacted], letter dated 10/23/85 from [redacted], letter dated 10/21/85 from [redacted], letter dated 9/17/86 from [redacted] re [redacted] case

b6
b7c

Results of Review

File #: 95-269475 Item or Specimen # Reviewed: Texas cases - Q1-Q63, Q65, Q68-Q75, Q76-Q84, Q88, Q90-97, K1, K2, K5-K13, Q129, Q130, K21-K37 California case - Q4

Review of Laboratory Report(s) and Bench Notes:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- 1) Did the examiner perform the appropriate tests in a scientifically acceptable manner, based on the methods, protocols, and analytic techniques available at the time of the original examination(s)?
 Yes No Unable to Determine
- 2) Are the examination results set forth in the laboratory report(s) supported and adequately documented in the bench notes?
 Yes No Unable to Determine

Review of Testimony:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- Transcript not available. *- See narrative - Additional Comments.*
- 3) Testimony consistent with the laboratory report(s)? *cl* Yes No Unable to Determine
- 4) Testimony consistent with the bench notes? Yes No Unable to Determine
- 5) Testimony within bounds of examiner's expertise? Yes No Unable to Determine

Comments

(Set forth by above question #, if applicable.
Use "Additional Comments" Sheet, if needed)

1) The microspectrophotometry data regarding the yellow acrylics is not acceptable. There is a slight difference observed in the Q60 samples that is not seen in the other fibers - Q 9-13 & Q 22 + Q 21. While this could be insignificant (i.e. due to debris on surface) there is no way of determining this from the spectra. It is also possible that it may be a true and significant difference relating to dye absorption of this fiber. Since Q60 is the control yellow nylon and since its spectra is different from the others, the comparison is questionable. (See CLL notes pg. 2 for specifics)
In addition to differences in Q60 spectra there are many small peaks or spikes which may be due to electrical current (cont next page)

Review completed at: 5:30 (Time), 5/19/99 (Date)

Total time spent conducting review (to nearest 1/4 hour): 1 1/2 hrs.

I hereby certify that I conducted this review in an independent, unbiased manner and that the results of my review are fully documented on this report consisting of a total of 26 pages.

8 pages - peer review form + 18 pages CLL notes

Clifford L. Lemme 5/19/99
(Signature) (Date)

Additional Comments
(Set forth by question #, if applicable)

File #: 95-269475

1) fluctuations or some other unknown & instrumental stability problem, etc. If multiple runs were conducted on each fiber (this was accepted scientific practice in the mid-1980's from my experience) - these small fluctuations could be better explained. There is no documentation to support that multiple runs were conducted on any of these fibers.

Fiber Identifications - There are no mentions of the technique utilized in the identification. There is no documentation to support the identifications made regarding nylon and acrylic fibers.

In fact the technician notes regarding Q40 indicate that a label was on the back which indicates polyester as the fiber comprising this floor mat.

In the report ^{3/31/84} the examiner compares a beige 2) trilobal nylon fiber from Q22 to the fibers found in the comparison of the specimen Q40 floor mat and found that they 'microscopically match' and were consistent.

Q22 notes indicate that the fiber is nylon and "=Q40" while it is certainly possible that the label was incorrect - it can be summarized that this was a Misidentification (cont).

Additional Comments
(Set forth by question #, if applicable)

File #: 95-269475

1) The basis for my conclusion that this was a mis-identification is based on the following report dated 10/21/86. In this report (10/21/86) Q40 is identified as an off-white tri-lobed polyester. The notes accompanying this report first identified the Q40 fibers as nylon - but then changed it to polyester. The report of 5/19/99 states that "specimen Q40 consists of a piece of beige polyester carpet."

A mis-identification of the fibers comprising Q40 appears to have been made. If the fiber is polyester, then the mis-identification was in the 3/31/86 report. If the fiber is nylon, then the error/mis-identification lies with the 10/21/86 report (For the above reasons, ^{to be clear} I am excluding the label fiber ID on the back of Q40. If the label is accurate, the likelihood is that the error is on the 3/31/86 report). The fiber(s) in this case shall be re-examined, to clarify this issue.

Additional Comments
(Set forth by question #, if applicable)

File #: 95-269475

2) Documentation is inadequate for both hair examinations and fiber examinations/comparisons.

Hair notes of Agent Malme ask the type of characteristics observed - some cannot be interpreted.

No documentation on hairs from Q sources.

Report is not clear regarding some of the hair characteristics. ex. color was stated as 'black to brown for hairs found in 13 items but notes reveal only 1 black hair in all those items. Report should have stated black and brown hairs. This is not a significant problem.

Report states 'some individual microscopic characteristics' in conclusion regarding comparison hairs. The use of the term 'individual' is confusing and may even be misleading - this term was used in 3/31/86 report. In 10/21/86 report the term 'match' was used in referring to a hair comparison. Both terms 'individual' and 'match' should not be used.

Page 6 of 8

Initials: cll

Additional Comments
(Set forth by question #, if applicable)

File #: 95-269475

Narrative Regarding Testimony:

- The question to ask is 'Is The Testimony Accurate'?

Instances of inaccuracies

A) Testimony given that microspectrophotometry is a 'spectral fingerprint' which determines 'what kind of dye is in that fiber' and 'means they have the same dye'. All 3 are incorrect.

Testimony is over-stated as to specificity of microspectrophotometry.

B) Testimony correctly states that hair is not a fingerprint but then continues in the same paragraph about its uniqueness

Also noted is the statement that only on 2 occasions has he found similar hair in the 10,000 people he has examined. The 1st statement regarding uniqueness of hair is without scientific basis. The 2nd is confusing + misleading.

3) Testimony is given in this case regarding the forcible removal of hairs - This is not indicated in Lab report - Notes do document that hairs were forcibly removed but some of the descriptions in () are uninterpretable. Therefore, this reviewer cannot reach the same conclusion based on this documentation - The file does not contain adequate scientific documentation to support his conclusion.

→ The use of the 'at least 15 characteristics' is needed for a hair comparison. In my opinion, this testimony would not be generally accepted as scientifically accurate by the majority of hair fiber examiners.

Page 7 of 8

Initials: CL

Additional Comments
(Set forth by question #, if applicable)

File #: 95-269475

4) Pg. 1005 of Trial Transcript - examiner states that 'I processed them and took the hairs off'.
again on pg. 952 examiner states 'I removed (hairs and fibers) from items reported ...'
Agent Malone does not accurately state that a technician processed those items.
Testimony is therefore inaccurate and certainly not consistent with the bench notes.
The examiner gives testimony that he needs at least 15 characteristics in order to compare a hair but in many instances his documentation on the characteristics of K hairs is^{all} lists a minimum of 6 (six).

5) ^{pg. 965} The examiner apparently from the trial testimony regarding the microspectrophotometer does not understand this instrument - its limitations and/or its inability to identify specific dyes.
The testimony does not support that he understands this instrument.

For further information - see 18 pages of notes (all notes) regarding issues in this case.

Page 8 of 8

Initials: all